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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: [redacted] Office: Texas Service Center Date: SEP 26 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office for review. The director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. This Act provides, in pertinent part:

> [T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The director determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the CAA, because he entered the United States with a K-2 visa (child of an alien classified K-1, fiancée), pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The director, therefore, denied the application.

On appeal, the applicant's mother states that she did not marry her fiancé because she and her fiancé started having serious problems shortly after her arrival in the United States. She further states that she found herself having to make a decision between staying in a bad relationship to which her son was constantly exposed and in which she felt threatened. Her child's safety and well being won, and she left the relationship before she got married. The applicant submits additional evidence.

The record reflects that the applicant was born in Cuba on August 8, 1989, to a Cuban mother and a Cuban father. Based on an approved Form I-129F fiancée petition on behalf of his mother, the applicant was inspected and admitted into the United States as a K-2 nonimmigrant on April 7, 2001, and was authorized to remain for 90 days so that his mother may conclude a valid marriage with

[redacted], the petitioner of the Form I-129F. The record reflects that the applicant's mother failed to marry Mr. [redacted]

The director cited section 245(d) of the Act, 8 U.S.C. § 1255(d), in part:

> The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).

Additionally, the director maintained that although section 245(c) of the Act, 8 U.S.C. § 1255(c), will not be held against an applicant under the CAA, all other sections were specifically not repealed to applicants under the CAA. As a result, the restrictions recorded in section 245(d) of the Act do apply as the CAA has not annulled their authority over adjusting status to that of an alien admitted for lawful permanent residence. Therefore, even though an applicant under the Cuban Adjustment Act does not adjust status under section 245 of the INA, those sections, except 245(c), shall govern an applicant adjusting under the Cuban Adjustment Act. The director continued, "Furthermore, the Cuban Adjustment cannot be used by self-proclamation as stated later in one of its restricting sections (see Section 4) to repeal any part of the Immigration and Nationality Act, unless otherwise stated in the Cuban Adjustment Act itself."

Section 4 of the Cuban Adjustment Act (Public Law 89-732, November 2, 1966, as Amended) states:

> Except as otherwise specifically provided in this Act, the definition contained in section 101(a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration nationality, or naturalization.

Section 101(a) of the act defines "fiancee" and "fiance" as an alien who seeks to enter the United States solely to conclude a valid marriage with the petitioner within 90 days after admission. Section 101(a)(15)(K).

It is clear from Service regulations and from the statute that an alien admitted to the United States under the provisions of section 214 of the Act is subject to removal proceedings if the marriage with the petitioner does not occur within three months after admission of the said alien. Furthermore, the applicant is ineligible for adjustment of status under sections 245 or 216 of the Act.

The applicant's mother states that she did not understand why her application was denied as she believes that being a Cuban, having entered the United States legally, and having lived here for one year, qualifies her and her son to adjust status under the CAA. She refers to Commissioner Meissner's April 26, 1999 *News Release* (Clarification of Eligibility for Permanent Residence Under the Cuban Adjustment Act) stating, "Their applications for adjustment of status may be approved even if they do not meet the ordinary requirements for adjustment of status under section 245 of the Immigration and Nationality Act." The applicant's mother quotes the Commissioner's statement, "This policy clarification, effective immediately, helps define in specific terms those Cubans who are eligible for parole and adjustment of status under the Cuban Adjustment Act, regardless of how they arrived in the United States."

The applicant, in this case, is applying for adjustment of status to permanent residence under section 1 of the Cuban Adjustment Act and not under sections 245 or 216 of the Act. Section 245(d) states specifically that "The Attorney General may not adjust, under subsection (a)..." clearly indicating that it only applies to applications for adjustment of status under section 245.

To be eligible for adjustment of status under section 1 of the CAA, an alien must show only that he is a native or citizen of Cuba, that he was inspected and admitted or paroled into the United States, that he has been physically present in the United States for at least one year, and that he is admissible to the United States for permanent residence. *See Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

The applicant, in this case, was born in Cuba. He is, therefore, a native of Cuba, he was inspected and admitted into the United States subsequent to January 1, 1959, and he has been physically present in the United States for at least one year. He is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966. The director did not raise any other basis for denial, nor are there known grounds of inadmissibility.

Accordingly, the director's decision will be withdrawn, and the application will be approved.

ORDER: The director's decision is withdrawn. The application is approved.